

***AGRICULTURE AND AGRI-FOOD ADMINISTRATIVE MONETARY  
PENALTIES ACT***

**DECISION**

In the matter of an application for a review of the Minister's decision that the Applicant committed a violation pursuant to provision 138(2)(a) of the *Health of Animals Regulations*, and requested by the Applicant pursuant to paragraph 13(2)(b) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

**Alain Beaudry, Applicant**

**-and-**

**Canadian Food Inspection Agency, Respondent**

**MEMBER H. LAMED**

**Decision**

**Following an oral hearing and a review of all submissions and information relating to the violation as well as a review of the Minister's decision dated April 11, 2005, the Tribunal, by order, confirms the Minister's decision and orders the Applicant to pay the penalty in the amount of \$2,000 to the Respondent within 30 days after the day on which this decision is served.**

## REASONS

The Applicant requested an oral hearing pursuant to subsection 15(1) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* which was held in the city of Sherbrooke on April 18, 2007.

The Applicant was represented by himself.

The Respondent was represented by its counsel, Ms. Marie-Claude Couture.

At the hearing, the Tribunal verified that the parties were in possession of the following documents, which were placed on the record for the purposes of the hearing:

The Minister's decision of April 11, 2005;

The request for review of the Minister's decision submitted by the Applicant on April 25, 2005;

The summary of evidence prepared by the Respondent with a covering letter signed by Donato Fazio on May 3, 2005.

The Notice of Violation # 0405QC0171 dated February 16, 2005, alleges that the Applicant, on August 16, 2004, in St-Valérien, in the province of Quebec, committed a violation namely: "a chargé et transporté un porc par véhicule moteur qui, pour des raisons d'infirmité, de maladie, de blessure, de fatigue, ou toute autre raisons, ne pouvait pas être transporté sans souffrances indues au cours du voyage prévu", contrary to paragraph 138(2)(a) of the *Health of Animals Regulations*, which states as follows:

138.(2) Subject to subsection (3), no person shall load or cause to be loaded on any railway car, motor vehicle, aircraft or vessel and no one shall transport or cause to be transported an animal

(a) that by reason of infirmity, illness, injury, fatigue or any other cause cannot be transported without undue suffering during the expected journey;

The Minister based his decision on the evidence in the record, in particular the report by veterinarian Dr. Marcel Bouvier and the photographs corroborating the condition of the animal.

The record indicated that on August 16, 2004, the Applicant had a load of 29 pigs delivered to the Olymel slaughterhouse in St-Valérien. One of the animals was retained for ante-mortem inspection and identified by the number RI15P (*Ante-Mortem Screening Record*, CFIA Summary of Evidence, Tab 3). The veterinarian, Dr. Marcel Bouvier, examined the retained animal and observed that it had a 15-centimetre swelling on the right hind hock joint, a swelling on the left hind fetlock joint and a necrotic tail. Dr. Bouvier also found that the animal had apparent lameness, although it preferred to lie down.

Dr. Bouvier gave his opinion that transport had caused undue suffering to the animal, which should have been treated or euthanized at the farm.

At the hearing before the Tribunal, the Applicant, Alain Beaudry, argued that since the applicant's tattoo was not visible on the photograph of the pig, there was no evidence that it was in the load that he had delivered on August 16, 2004. He also stated that the regulations pertaining to the transport of animals were unclear at the time the load was transported.

The Tribunal could not accept the first argument primarily because the question of the identity of the pig was not brought before the Minister during the review of the facts, and secondly the documents evidencing the sampling and ante-mortem examination submitted by the Respondent establish, on a balance of probabilities, the identity and provenance of the afflicted animal. Note that the photographs were produced to corroborate the expert's statements and not to establish the provenance of the animal.

Regarding the second argument, the Tribunal stated that it was reviewing a decision of the Minister, and that in that context the Tribunal may not amend or cancel a decision except in cases of jurisdictional error or an error of law. For example, an application for review may be allowed for the following reasons:

1. Powers are exercised in bad faith.
2. Powers are improperly delegated.
3. Powers are exercised without regard to natural justice or fairness.
4. Powers are exercised for improper purposes.
5. There is no evidence before the Minister to support the decision.
6. A decision is based upon irrelevant considerations.
7. An error is made in the interpretation of related or governing legislation, common law principles generally, or as the principles apply to the facts.
8. A decision is so unreasonable that any reasonable person in the Minister's position could not have made it.

Although it is true that the *Health of Animals Regulations* were amended in 2005 to make the prohibitions regarding the transportation of non-ambulatory animals more explicit, at the time of the violation the Act prohibited the loading and transportation of unfit animals. The Tribunal found that the decision of the Minister applied the Act in a reasonable manner given the evidence presented.

For these reasons, the Tribunal upholds the Minister's decision that the Applicant committed the alleged violation and orders the Applicant to pay the penalty in the amount of \$2,000 to the Respondent within 30 days after the day on which this decision is served.

Dated at Montréal this 3<sup>rd</sup> day of August, 2007.

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H. Lamed, Member